



# PUBLIC NOTICE

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**DA 03-3940**

**Released: December 11, 2003**

## **WIRELINE COMPETITION BUREAU GRANTS CONSENT FOR ACQUISITION OF ASSETS OF TOUCH AMERICA, INC. BY 360 NETWORKS (USA) INC.**

### **WC Docket No. 03-227**

Pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and sections 0.91, 0.291, and 63.03 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 63.03, the Wireline Competition Bureau (Bureau) approves the application of 360networks (USA) inc. to acquire certain private line and dedicated Internet business service assets of Touch America, Inc. (Debtor-in-Possession) (Touch America).<sup>1</sup>

Only one commenter, Northrop Grumman,<sup>2</sup> opposed grant of the application.<sup>3</sup> Northrop Grumman contends that without provision for the continued uninterrupted operations of Touch America's ATM and Frame Relay services, the proposed transaction will place critical services for the United States Government in jeopardy. In response to Northrop Grumman's comments, Touch America notes that this application does not involve its ATM/Frame Relay services. Nonetheless, Touch America added that it will continue to provide these services until qualified carriers are authorized to provide service to all existing customers.<sup>4</sup> We note that on December 8, 2003, Touch America filed an application for discontinuance of its ATM and Frame Relay services, pursuant to section 63.71 of the Commission's rules, 47 C.F.R. § 63.71.<sup>5</sup> We defer our

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<sup>1</sup> See Domestic Section 214 Application Filed for Acquisition of Assets of Touch America, Inc. by 360networks (USA) Inc., WC Docket No. 03-227, Public Notice, DA 03-3547 (rel. Nov. 4, 2003); see also Amendment to Joint Application, WC Docket No. 03-227 (filed Nov. 21, 2003).

<sup>2</sup> Northrop Grumman Comment, WC Docket No. 03-227 (filed Nov. 18, 2003).

<sup>3</sup> While the U.S. Department of Homeland Security filed a petition asking the Commission to defer action on the application, see Petition to Defer of the U.S. Department of Homeland Security, WC Docket No. 03-227 (filed Nov. 18, 2003), the Department withdrew its petition on December 5, 2003, see also Letter from U.S. Department of Homeland Security, WC Docket No. 03-227 (filed Dec. 5, 2003).

<sup>4</sup> Response to Comment Submitted by Northrop Grumman on the Domestic Section 214 Application filed for Acquisition of Assets of Touch America, Inc. by 360networks (USA) inc., and the Amendment to Joint Application, WC Docket No. 03-227 (filed Nov. 25, 2003).

<sup>5</sup> See Touch America Section 63.71 Application (filed Dec. 8, 2003).

consideration of Touch America's discontinuance of its ATM and Frame Relay services to our review of Touch America's discontinuance application.

The Bureau finds, upon consideration of the record, that the proposed transfer will serve the public interest, convenience and necessity, and therefore grants the requested authorization.<sup>6</sup> Pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, the consent granted herein is effective upon the release of the Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Tracey Wilson, at (202) 418-1394 or Dennis Johnson, Competition Policy Division, Wireline Competition Bureau at (202) 418-0809.

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<sup>6</sup> See *Joint Applications of Global Crossing Ltd., and Citizens Communications Company for Authority to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 20, 22, 63, 78, 90, and 101 of the Commission's Rules*, Memorandum Opinion and Order, 16 FCC Rcd 8507, 8511-14 (WCB/IB/CSB/WTB 2001) (granting transfer of control on delegated authority after the Department of Justice withdrew a Petition to Defer).